

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTONIO SALAZAR and U.S. POSTAL SERVICE,
POST OFFICE, Santa Clarita, CA

*Docket No. 02-2255; Submitted on the Record;
Issued January 7, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained a right shoulder injury in the performance of duty.

On April 25, 2002 appellant, then a 54-year-old mailhandler, filed an occupational disease claim alleging that he sustained tendinitis of the rotator cuff in his right shoulder. Appellant stated that this injury was caused by the repetitive motions required in his job, including the sorting of mail and the loading and unloading of heavy mail containers. He stopped work on April 25, 2002. On May 3, 2002 the Office of Workers' Compensation Programs requested that appellant submit, within 30 days, additional factual and medical evidence, including a rationalized medical report relating his claimed injury to employment factors. By decision dated June 28, 2002, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an employment-related right shoulder injury.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a right shoulder injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

Appellant did not submit sufficient medical evidence to establish that he sustained an employment-related right shoulder injury. He submitted April 24, 2002 notes in which Dr. Vernon Lackman, an attending Board-certified internist, indicated that he should stay off work until May 13, 2002 due to rotator cuff tendinitis. In a note dated May 23, 2002, Dr. Lackman stated that appellant could return to work on June 3, 2002 with restrictions until June 24, 2002. These reports, however, are of limited probative value on the relevant issue in that they do not contain an opinion on causal relationship.⁵ Dr. Lackman did not provide any opinion that appellant was disabled due to an employment-related condition. He did not address how appellant's right shoulder condition was caused or aggravated by factors of his federal employment. The Office requested that appellant submit a rationalized medical report relating his claimed injury to employment factors, but he did not do so within the time allotted.⁶

³ See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁵ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁶ Appellant submitted additional evidence after the Office's June 28, 2002 decision. However, the Board cannot consider such evidence for the first time on appeal; see 20 C.F.R. § 501.2(c). Appellant may wish to resubmit such evidence to the Office through the reconsideration process; see 5 U.S.C. § 8128.

The June 28, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
January 7, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member